

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID JOHN DONOVAN,

Defendant-Appellant.

UNPUBLISHED

March 16, 1999

No. 207452

Recorder's Court

LC No. 89-007382

Before: Talbot, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of five counts of felonious assault, MCL 750.82; MSA 28.277, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Seven years later,¹ defendant was sentenced to one to four years' imprisonment for each of the felonious assault convictions and to two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right and we affirm.

On appeal, defendant argues that he was denied a fair trial when the trial court excessively interfered with the questioning of witnesses, improperly invaded the prosecutorial role, disparaged defense counsel, and displayed an attitude of partisanship. We disagree. A defendant in a criminal trial is entitled to expect a neutral and detached magistrate. E.g. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). While a trial court may question witnesses to clarify testimony or elicit additional relevant information, the trial court must exercise caution and restraint to ensure that its questions and comments are not intimidating, argumentative, prejudicial, unfair, or partial. *Id.* The test is whether the judge's questions and comments may have unjustifiably aroused suspicion in the mind of the jury concerning a witness' credibility and whether partiality quite possibly could have influenced the jury to the detriment of the defendant's case. *Id.* Similarly, a trial judge may destroy the balance of partiality by berating, scolding, or demeaning counsel. *People v Wigfall*, 160 Mich App 765, 773; 408 NW2d 551 (1987). While a trial judge's unfair criticism of counsel in the presence of the jury is always improper, reversal is not appropriate unless the judge's conduct denied defendant a fair trial. *Id.* at 774. In this case, after carefully reviewing the alleged improper judicial comments and questions set forth in

defendant's brief on appeal, we conclude that the tenor of the trial judge's questions and comments did not indicate any particular partiality. Accordingly, we hold that defendant was not denied a fair trial.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Michael R. Smolenski

¹ Defendant's sentencing occurred seven years after his convictions because defendant fled the state while on bond.